

SWP No. 832/2012
CMA Nos. 2394/2012 & 1274/2012

Lt. Colonel S.K.Singh Vs. Union of India & ors.

Appearing Counsel:

i)	Whether approved for reporting in Press/Media	:	Optional
ii)	Whether to be reported in Digest/Journal	:	Yes

1. Lieutenant Colonel Sanjeev Kumar Singh of Central Ammunition Depot, *Pulgaon*, attached to 17 Rajput Regiment is facing trial before the General Court Martial convened by Order of IC-35480N Major General Surinder Singh, SM, VSM, General Officer Commanding, 26 Infantry Division.
2. His plea in bar to trial was disallowed by the General Court Martial holding that subject matter contained in Charge Nos. 1 & 3 of the Final Charge Sheet being same as the facts endorsed in the directions of the General Officer Commanding-in-Chief, Western Command dated 01 April, 2009 and the Tentative Charge, the charges were not time barred.

3. Questioning the Final Charge Sheet dated 07.03.2012 and the orders passed by the General Court Martial rejecting his plea in bar of trial, the petitioner's case, in a nut-shell, as projected by his learned counsel, is that Charge Nos. 1 and 3 appearing in Charge Sheet dated 07 March, 2012 being not part of the Tentative Charge Sheet dated 12th April, 2010, on which the petitioner was heard by the Commanding Officer, and the directions of the General Officer Commanding-in-Chief, Western Command, his trial was un-warranted being based on No Evidence and otherwise time barred.

4. Mr. Rabstan, learned Central Government Standing Counsel submits that the Charges having been framed on the strength of the evidence collected during recording of Summary of evidence and pursuant to the directions of the General Officer Commanding-in-Chief, Western Command, who had found these justified after scrutinizing the evidence and the *pre trial* advice of the Deputy Judge Advocate General, the exercise of extraordinary jurisdiction may not be warranted in the facts and circumstances of the case, additionally because the petitioner had not availed of the alternative remedy prescribed under Section 164 of the Army Act before approaching the Court. Learned counsel would submit that the Charges were otherwise also justified in view of the provisions of Rule 22 of the Army Rules.

5. Considered the submissions of learned counsel for the parties and perused the material brought by them on records. Copy of the Court Martial Proceedings and the

pre trial advice of the Deputy Judge Advocate General dated 25th April, 2011 to the General Officer Commanding-in-Chief, 26 Infantry Division too have been perused.

6. To deal with the issues demonstrated by the learned counsel for the parties at the Bar, for and against the petitioner's trial on the Charges, reference needs to be made to the Tentative Charge Sheet on which the petitioner was heard by the Commanding Officer and the Final Charge Sheet prepared by the Commanding Officer, 17 Rajput Regiment co-signed by the General Officer Commanding, 26 Infantry Division. The Tentative Charge Sheet and the Final Charge Sheet are reproduced hereunder for reference:-

" TENTATIVE CHARGE SHEET

The accused, IC-54365H Lieutenant Colonel Sanjeev Kumar Singh of Central Ammunition Depot Pulgaon, attached with 17 BIHAR, an officer holding a permanent commission in the regular Army, is charged with:-

First Charge
Army Act Section 63

**AN OMISSION PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE**

in that he,

at Delhi, between June 2007 to
February 2008 while performing the
duties of Deputy Director Ordnance

Services (Technical Services) Coordination at Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) Delhi, and being concerned with the procurement process of additionalities stores for United Nations Mission Contingents Units, improperly omitted to include Last Purchase Price and Original Equipment Manufacturer rules in respect of Kirloskar 100 Kilo Volt Ampere Generator Sets and Power Cables in the concerned documents.

Second Charge
Army Act Section 63

**AN OMISSION PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE**

in that he,

at Delhi, between June 2007 to February 2008

while performing the duties of Deputy Director Ordnance Services (Technical Services) Coordination at Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) Delhi, and being concerned with the procurement process of Kirloskar 100 Kilo Volt Ampere Generator Sets with accessories as additionalities stores for United Nations Missions Contingents Units, failed to ensure maintenance of records of dispatch of Tender Enquiries and receipts and the same were transacted with the vendors by hand, contrary to Para 9.16 of Defence Procurement Manual 2006.

Third Charge
Army Act Section 63

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Delhi, between June 2007 to February 2008 while performing the duties of Deputy Director Ordnance

Services (Technical Services) Coordination at Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) Delhi, and being concerned with the procurement process of additionalities stores for United Nations Mission Contingents Units, improperly omitted to maintain a written record of processing and approval of Additional Directorate General Ordnance Services (Technical

Services) for purchase of Generator Sets and Power Cables at various stages.

Fourth Charge
Army Act Section 63

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Delhi, between June 2007 to February 2008 while performing the duties of Deputy Director Ordnance Services (Technical Services) Coordination at Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) Delhi, and being concerned with the procurement

process of additionalities stores for United Nations Mission Contingents Units, improperly omitted to bring the irregularities and illegalities being practiced in the procurement process of additionalities stores for United Nations Mission Units to superior authorities.

Fifth Charge
Army Act Section 63

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

in that he,

at Delhi, between 27 October 2008 and 18 November 2008, while being a witness in the Court of Inquiry proceedings, convened vide Headquarters Western Command Order No. 00337/C of I/ADG OS (TS)/UN Stores/DV-2 dated 15 October 2008, did not disclose the irregularities and illegalities being practiced in the procurement process of additionalities stores for United Nations Mission Units, thereby misleading the investigation before the Court of Inquiry.

Place : Jammu
Dated: 12 April 2010

Sd/-
(MS Sidhu)
Colonel
Commanding Officer
17 BIHAR”

“CHARGE SHEET

The accused, IC-54365H Lieutenant Colonel Sanjeev Kumar Singh of Central Ammunition Depot, Pulgaon attached to 17 RAJPUT Regiment, an officer holding a permanent commission in the regular Army, is charged with:-

First Charge IN A DOCUMENT MADE BY HIM KNOWINGLY
Army Act Section 57(b) MAKING AN OMISSION WITH INTENT TO
DEFRAUD

in that he,

at New Delhi on or about 04 Jul 2007, which came to the knowledge of the authority competent to initiate action on 01 Apr 2009, while performing the duties of Deputy Director Ordnance Services (Technical Stores) Coordination, Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) and being concerned with the procurement process of additionalities stores for

United Nations Mission Contingent Units, **with intent to defraud**, knowingly omitted to mention the Last Purchase Price of Generator Set 100 Kilo Volt Amperes Silent Kirloskar in the Spot Allocation Chart with respect to Tender Enquiry Number P/UN/TE-37/ADG OS TS dated 01 Jun 2007, for items decided in Price Negotiation Committee cum Tender Purchase Committee held on 04 July 2007, in connection with procurement of trade items for 26 MADRAS (Second Rotation).

Second Charge
Army Act Section 63
(Alternative to the first
Charge)

AN OMISSION PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE

in that he,

at New Delhi on or about 04 Jul 2007, which came to the knowledge of the authority competent to initiate action on 01 Apr 2009, while performing the duties of Deputy Director Ordnance Services (Technical Stores) Coordination, Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) and being concerned with the procurement process of additionalities stores for United Nations Mission Contingent Units, improperly omitted to mention

the Last Purchase Price of Generator Set 100 Kilo Volt Amperes Silent Kirloskar in the Spot Allocation Chart with respect to Tender Enquiry Number P/UN/TE-37/ADG OS TS dated 01 Jun 2007, for items decided in Price Negotiation Committee cum Tender Purchase Committee held on 04 Jul 2007, in connection with procurement

of trade items for 26 MADRAS (Second Rotation).

Third Charge
KNOWINGLY
Army Act Section 63

IN A DOCUMENT MADE BY HIM
MAKING AN OMISSION WITH INTENTION TO
DEFRAUD

in that he,

at New Delhi on or about 28 February 2008, which came to the knowledge of the authority competent to initiate action on 01 April 2009, while performing the duties of Deputy Director Ordnance Services (Technical Stores) Coordination, Ordnance Services Directorate, Integrated

Headquarters of Ministry of Defence (Army) and being concerned with the procurement process of additionalities stores for United Nations Mission Contingent Units, **with intent to defraud**, knowingly omitted to mention the Last Purchase Price of Power Cable 95 Square Millimeter 3 Core (Havels/Finolex) in the Spot Allocation Chart with respect to Tender Enquiry Number PC/15318/5/1 GR (1ROT) UN/TE-75/ADG OS TS dated 15 January 2008, for items decided in Price Negotiation Committee cum Tender Purchase Committee held on 28 February 2008, in connection with procurement of trade items for 5/1 GORKHA Rifles (First Rotation).

Fourth Charge
Army Act Section 63
(Alternative to the
Third charge)

AN OMISSION PREJUDICIAL TO GOOD
ORDER AND MILITARY DISCIPLINE

in that he,

at New Delhi on or about 28 February 2008, which came to the knowledge of the authority competent to initiate action on 01 April 2009, while performing the duties of Deputy Director Ordnance Services (Technical Stores) Coordination, Ordnance Services Directorate, Integrated Headquarters of Ministry of Defence (Army) and being concerned with the procurement process of additionalities

stores for United Nations Mission Contingent Units, improperly omitted to mention the Last Purchase Price of Power Cable 95 Square Millimeter 3 Core (Havels/Finolex) in the Spot

Allocation Chart with respect to Tender Enquiry Number PC/15318/5/1 GR (1ROT) UN/TE-75/ADG OS TS dated 15 January 2008, for items decided in Price Negotiation Committee cum Tender Purchase Committee held on 28 February 2008, in connection with procurement of trade items for 5/1 GORKHA Rifles (First Rotation).

Place : Jammu
Dated: 07 Mar 2012

Sd/-
(Ritesh Bahl)
Colonel
Commanding Officer
17 RAJPUT Regiment"

7. Perusal of the Tentative Charge Sheet and the Final Charge Sheet reveals that the FACTS on which Tentative Charge Sheet was framed, are same, as those appearing in

the Final Charge Sheet. All that is added in 1st and 3rd Charge is the “INTENTION TO DEFRAUD”. In other words, what appears to have been added in the Final Charge Sheet is the intent to defraud attributed to the petitioner, on the FACTS already on records and in the knowledge of the General Officer Commanding-in-Chief, Western Command.

8. The petitioner’s plea that there was absolutely no material to justify 1st and 3rd Charge may not, therefore, be sustainable, for, all that appears to have been done is a fresh look by the General Officer Commanding-in-Chief, on the facts already available before him which would demonstrate petitioner’s intention to defraud as well.

9. This apart, perusal of the advice of the Deputy Judge Advocate General dated April 25, 2011 to the General Officer Commanding, 26 Infantry Division, a detailed document, that, *inter alia*, refers to the evidence collected under Rule 22 of the Army Rules, indicating the acts of commission and omission attributed to the petitioner, his defence thereto, besides the facts and circumstances of the case, justifies the decision of the General Officer Commanding-in-Chief, which he took after considering the findings of the Court of Inquiry, Summary of Evidence and the Report of the Deputy Judge Advocate General.

10. Even otherwise, the contents of the Tentative Charge would indicate that all the four Charges framed against the petitioner emanate from the facts and subject matter for which he was found blameworthy in the Court of Inquiry findings.

11. Omission of expression “with intent to defraud” in the Tentative Charge Sheet may not as such operate impediment for the Commanding Officer to frame requisite Charge which may appear to have been made out, on the facts, circumstances and the evidence available on records.

12. This apart, if the facts on records disclose the commission of offences other than and in addition to the Tentative Charges, the provisions of Rule 22 (4) of the Army Rules permit framing of such Charges. Rule 22 (4) of the Army Rules, is reproduced hereunder for reference. It reads as follows:-

“22(4)-Where the evidence taken in accordance with sub-rule (3) of this rule discloses an offence other than the offence which was the subject of the investigation, the commanding officer may frame suitable charge(s) on the basis of the evidence so taken as well as the investigation of the original charge.”

13. The facts being the same on which the petitioner was heard on the Tentative Charge and which were in the knowledge of the General Officer Commanding-in-Chief, Western Command, as it so appears from his directions dated 01 April, 2009, the additional Charges framed against the petitioner on the existing facts, cannot be said barred by time. In other words, if the facts on which the Tentative Charge was framed disclosed commission of more offences other than those on which the Petitioner was initially heard by the Commanding Officer, there was no impediment in law for his trial on fresh Charges as well.

14. The petitioner's plea that the General Officer

Commanding-in-Chief, Western Command had not found the petitioner involved in any such act or omission which would demonstrate his intention to defraud, is, therefore, found devoid of merit because the material on records and the pre trial advice of the Deputy Judge Advocate General does not support the petitioner's plea.

15. The orders passed by the General Court Martial and the findings returned by it in rejecting the petitioner's plea are, therefore, found suffering from no error of law.

16. There is, therefore, no scope for Judicial Review of the orders of the General Court Martial.

17. This apart, the petitioner is disentitled to invoke the Extra Ordinary Criminal Writ Jurisdiction of the Court when the alternative remedy was available to him under Section 164(1) of the Army Act if he considered himself aggrieved by any order of the General Court Martial.

18. Thus found without merit, this Writ Petition is accordingly dismissed, lifting interim order dated 12.04.2012.

19. Records be returned to the learned Union Counsel.

(J. P. SINGH)
JUDGE

JAMMU:
13.08.2012
Pawan Chopra